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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Monica Valenzuela,

No. CV-22-1267-PHX-DLR

Plaintiff,

ORDER

V.

Commissioner of Social Security,

Defendant.

On October 4, 2019, Claimant Monica Valenzuela filed a Title II application for a period of disability and disability insurance benefits. She also filed a Title XVI application for supplemental security income on October 25, 2019. In both applications, Claimant alleged disability beginning February 1, 2019. (AR. 16.) The agency denied her claim initially and again on reconsideration. (AR. 16) After an administrative hearing, the Administrative Law Judge (“ALJ”) issued an unfavorable decision on July 28, 2021, finding Claimant not disabled. (AR. 30.) The Appeals Council denied review of the decision, making the ALJ’s decision the final decision of the Commissioner of the Social Security Administration. (AR. 1.) Claimant seeks judicial review of the Commissioner’s decision under 42 U.S.C. § 405(g).

I. Standard

An ALJ's factual findings are "conclusive if supported by substantial evidence." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019) (quotation and citation omitted). Substantial evidence is "more than a mere scintilla" and "means—and means only—such

1 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
 2 *Id.* at 1154 (quotations and citations omitted). “When evidence reasonably supports either
 3 confirming or reversing the ALJ’s decision, [the Court] may not substitute [its] judgment
 4 for that of the ALJ.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir.
 5 2004). The substantial evidence standard is a “highly deferential standard of review.”
 6 *Valentine v. Comm’r of Soc. Sec.*, 574 F.3d 685, 690 (9th Cir. 2009). In its review of an
 7 ALJ’s decision, the Court reviews only those issued raised by the party challenging the
 8 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).

9 To determine whether a claimant is disabled, the ALJ engages in a five-step process.
 10 20 C.F.R. § 404.1520(a). The claimant bears the burden of proof on the first four steps, but
 11 the burden shifts to the Commissioner at the fifth step. *Tackett v. Apfel*, 180 F.3d 1094,
 12 1098 (9th Cir. 1999). At the first step, the ALJ determines whether the claimant is presently
 13 engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). At the second step,
 14 the ALJ determines whether the claimant has a “severe” medically determinable physical
 15 or mental impairment. *Id.* § 404.1520(a)(4)(ii). At the third step, the ALJ considers whether
 16 the claimant’s impairment or combination of impairments meets or medically equals an
 17 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. *Id.* §
 18 404.1520(a)(4)(iii). If so, the claimant is automatically determined to be disabled. If not,
 19 the ALJ moves to the fourth step, where she assesses the claimant’s residual functioning
 20 capacity (“RFC”) and determines whether the claimant is still capable of performing past
 21 relevant work. *Id.* § 404.1520(a)(4)(iv). If the claimant is not so capable, the ALJ proceeds
 22 to the fifth and final step, where she determines whether the claimant can perform any other
 23 work in the national economy based on the claimant’s RFC, age, education, and work
 24 experience. *Id.* § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

25 **II. Analysis**

26 In resolving Claimant’s applications, the ALJ made the following findings: (1)
 27 Claimant has not engaged in gainful activity since July 26, 2019; (2) Claimant’s severe
 28 medically determinable impairments include obesity, hypertension, chronic kidney

1 disease, a hiatal hernia, gastroesophageal reflux disease, thoracic spondylosis, abdominal
 2 lymphadenopathy, a depressive disorder, and an anxiety disorder; (3) her impairments do
 3 not meet or medically equal the severity of one of the presumptively disabling impairments
 4 listed in agency regulations; and (4) Claimant has the RFC to perform light work, except
 5 she can stand and/or walk and sit six to eight hours during an eight hour day, frequently
 6 balance, stoop, kneel, and crouch, frequently handle with her left arm, occasionally climb
 7 and crawl, occasionally reach with her left arm, should not work around heights or moving
 8 machinery, and can perform simple routine work involving simple work-related decisions
 9 and simple instructions with few changes in the work setting. (AR. 19-22.) Based on this
 10 RFC, the ALJ found Claimant could perform her past relevant work as a garment sorter,
 11 scrap sorter, and janitor. (AR. 28.) The ALJ therefore found Claimant not disabled at step
 12 four of the process.

13 Claimant raises two issues for review: (1) whether, in crafting Claimant's RFC, the
 14 ALJ properly considered and explained her rejection of certain restrictions assessed by Dr.
 15 Jose Abreu and (2) whether the ALJ provided sufficient reasons for rejecting Claimant's
 16 allegations that her irritable bowel syndrome ("IBS") produces disabling restrictions. (Doc.
 17 13 at 1.)

18 **A. Dr. Abreu's Assessment**

19 For claims filed on or after March 27, 2017, ALJs give no specific evidentiary
 20 weight, including controlling weight, to any medical opinion. 20 C.F.R. § 416.920c(a).
 21 Instead, the regulations require that the ALJ consider all medical opinions and articulate
 22 how persuasive she finds them. *Id.* at § 416.920c(b).

23 The ALJ considers several factors in assessing the persuasiveness of a medical
 24 opinion, but she need only articulate her findings regarding the supportability and
 25 consistency of the opinion with other evidence in the record. *Id.* § 416.920c(b)(2).
 26 Supportability refers to the supporting explanations and objective medical evidence offered
 27 by the source to justify their medical opinion. *Id.* § 413.920c(c)(1). Consistency refers to
 28

1 the uniformity and agreement amongst the evidence from other medical and nonmedical
2 sources. *Id.* § 416.920c(c)(2).

3 The ALJ found Dr. Abreu's examination conclusion "partially consistent with the
4 record and therefore, partially persuasive." (AR. 27.) She explained that the part of the
5 opinion she found unpersuasive was not consistent with or supported by the medical
6 evidence. (AR. 21, 27.) The ALJ adequately explained and supported her finding.

7 Dr. Abreu opined Claimant "was able to carry out simple instructions" and "noted
8 no problems with attention or concentration." (AR. 426.) Dr. Abreu reported Claimant's
9 memory function was fine and fund of knowledge and expression consistent with average
10 intelligence. (AR. 426.) According to Dr. Abreu, "[t]his suggests she is able to follow
11 detailed instructions and work-life procedures." (AR. 426.) Claimant has no history of
12 special education or learning difficulties. (AR. 422.) Dr. Abreu performed a "Mini Mental
13 Status Exam," which Claimant passed with a score of twenty-nine out of thirty. (AR. 423.)
14 When Dr. Abreu asked Claimant about the barriers she faces to gain employment, she
15 replied: "My IBS and my migraines." (AR. 422.) She did not mention any mental health
16 barriers. This part of the report is consistent with the ALJ's RFC determination, indicting
17 it is the portion the ALJ found persuasive. (AR. 22, 27.)

18 However, Dr. Abreu also reported that Claimant "has at least three symptoms of
19 depression, depressed mood, anhedonia, and feelings of worthlessness/guilt, the latter
20 causing chronic social isolation." (AR. 425.) He opined that "a sense of worthlessness
21 manifested in blunted affect in tandem with anxiety may cause difficulty maintaining
22 regular work attendance as well as socially appropriate behavior in work situations." (AR.
23 425.) The ALJ thought this statement was "based on pure speculation and not concrete
24 evidence," and further was inconsistent with Claimant's reported activity level. (AR. 22,
25 27.) There is no evidence in the record that supports Claimant having difficulty maintaining
26 regular work attendance or socially appropriate behavior in work situations due to feelings
27 of worthlessness. (AR. 21.) To the contrary, Claimant said about her most recent
28 employment, "I liked my job." (AR. 54.) Claimant further testified, "And I really had good

1 numbers. And it was something that I enjoyed doing, and in the atmosphere with the
 2 people.” (AR. 54.) Claimant lost her previous job because of her frequent bathroom breaks.
 3 (AR. 54.) The ALJ reasonably concluded that the portion of Dr. Abreu’s opinion predicting
 4 that Claimant might have difficulty maintaining regular work attendance and socially
 5 appropriate behavior in work situations was speculative and not consistent with the overall
 6 evidentiary record.

7 **B. Claimant’s Symptom Testimony**

8 An ALJ performs a two-step analysis to evaluate a claimant’s testimony regarding
 9 pain and symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). First, the ALJ
 10 must determine whether the claimant has presented objective medical evidence of an
 11 impairment “which could reasonably be expected to produce the pain or symptoms
 12 alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007) (quotation and
 13 citation omitted). If the claimant has presented such evidence, the ALJ may only reject the
 14 claimant’s testimony regarding the severity of his symptoms “by offering specific, clear
 15 and convincing reasons for doing so.” *Garrison*, 759 F.3d at 1014–15 (quotation and
 16 citation omitted).

17 The ALJ may engage in ordinary techniques of credibility evaluation, including
 18 considering the claimant’s reputation for truthfulness or looking to inconsistencies in the
 19 claimant’s testimony, but she may not reject a claimant’s testimony solely for “lack of
 20 medical evidence.” *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). This Court will
 21 uphold the ALJ’s decision so long as she has provided legally sufficient reasons for
 22 rejecting the claimant’s testimony, even if the ALJ did not “clearly link [her] determination
 23 to those reasons.” *Lewis*, 236 F.3d at 512. “Even when an agency explains its decision with
 24 less than ideal clarity, a reviewing court will not upset the decision on that account if the
 25 agency’s path may reasonably be discerned.” *Alaska Dep’t of Env’t Conservation v. EPA*,
 26 540 U.S. 461, 497 (2004) (quotations and citation omitted).

27 Claimant testified that her impairments manifest in swelling due to diarrhea, which
 28 caused pain with walking. Claimant said she was in the bathroom eight to ten times a day,

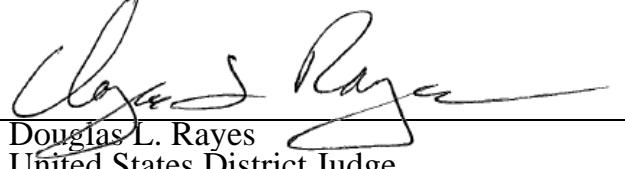
1 taking ten to fifteen minutes each time and sometimes even taking thirty minutes. (AR. 54-
2 55.) The ALJ concluded Claimant presented objective medical evidence of severe
3 impairments, which reasonably could be expected to produce the alleged symptoms. (AR.
4 19.) But the ALJ determined Claimant's statements concerning the "intensity, persistence
5 and limiting effects of these symptoms are not entirely consistent with the medical evidence
6 and other evidence in the record[.]" (AR. 24.)

7 Inconsistency with the overall evidentiary record (as opposed to lack of
8 corroboration) is a clear and convincing reason for discounting a claimant's symptom
9 testimony, and substantial evidence supports the ALJ's finding on this point. For example,
10 the objective medical evidence showed that a July 2020 CT scan of Claimant's "abdomen
11 and pelvis showed no evidence of bowel obstruction, resolved colon mural thickening and
12 inflammation, diverticulosis without evidence of diverticulitis, and a small hiatal hernia."
13 (AR. 463) Though Claimant alleges she suffers from chronic and debilitating impairments,
14 the record reveals that Claimant was treated conservatively for these impairments. (AR.
15 454, 465.) She was advised several times to eat a high fiber diet to help with her IBS
16 symptoms. (AR. 465.) A treatment plan consisting of dietary changes is not consistent with
17 the severity of symptoms Claimant alleged. What's more, it is not clear from the record if
18 Claimant ever followed the advice to eat a high fiber diet, meaning it also is unclear if the
19 Claimant's symptoms would have improved had she followed the advice of her doctors.
20 Claimant reported to be complying with labs, stool studies, and a gastric emptying scan
21 ("GES") that was ordered for her in December 2019, but she did not fulfill them and did
22 not follow up on them. (AR. 469.) When Claimant finally did a GES, the results were
23 normal, and she again was advised to eat a high fiber diet and given educational material
24 on the subject. (AR. 465.) Additionally, Claimant did not take prescribed medications.
25 (AR. 502.) The ALJ reasonably concluded that non-compliance with medical advice and
26 treatment recommendations is inconsistent with the chronic and debilitating symptoms
27 Claimant described. The ALJ did not err.

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1 **IT IS ORDERED** that the ALJ's decision is **AFFIRMED**. The Clerk is directed to
2 enter judgment accordingly and terminate this case.

3 Dated this 5th day of July, 2023.

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8 Douglas L. Rayes
9 United States District Judge

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